IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 11621 of 2007(H)

PETITIONER:

FLOWER AUGUSTINE,
NURSING SUPERINTENDENT, REGIONAL CANCER CENTRE,
THIRUVANANTHAPURAM.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. **THE CHAIRMAN, EXECUTIVE COMMITTEE,**
   REGIONAL CANCER CENTRE, P.B.NO.2417,
   MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

2. **REGIONAL CANCER CENTRE, REPRESENTED**
   BY ITS DIRECTOR, MEDICAL COLLEGE P.O.,
   THIRUVANANTHAPURAM.

3. **THE DIRECTOR,**
   REGIONAL CANCER CENTRE,MEDICAL COLLEGE P.O.,
   THIRUVANANTHAPURAM.

BY ADV. SRI.K.R.RADHAKRISHNAN NAIR, SC, RCC FOR R2 & R3,
GOVT. PLEADER SRI. BIJOY CHANDRAN FOR R1.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.11621/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE B.S.C. NURSING CERTIFICATE ISSUED TO THE PETITIONER BY INDIRA GANDHI NATIONAL OPEN UNIVERSITY DTD. 03/10/2000.

EXT.P.2: COPY OF THE CIRCULAR DTD. 07/05/2005 OF THE P.S.C.

EXT.P.3: COPY OF THE RECOGNITION OF THE NURSING COUNCIL OF INDIA THAT B.SC. NURSING DEGREE AWARDED BY I.G. NATIONAL OPEN UNIVERSITY IS SUFFICIENT QUALIFICATION FOR ADMISSION TO M.SC NURSING COURSE.

EXT.P.4: COPY OF THE APPOINTMENT ORDER DTD. 14/01/1993 ISSUED TO THE PETITIONER BY R.C.C., THIRUVANANTHAPURAM.

EXT.P.5: COPY OF THE ORDER DTD. 29/11/2002 ISSUED BY THE GOVERNMENT.

EXT.P.6: COPY OF THE CERTIFICATE DTD. 15/10/1993 ISSUED TO THE PETITIONER BY THE ADMINISTRATIVE OFFICER OF R.C.C.

EXT.P.6.A: COPY OF THE CERTIFICATE DTD. 07/03/1994 ISSUED TO THE PETTIONER BY THE REGISTRAR OF R.C.C.

EXT.P.6.B: COPY OF THE CERTIFICATE DTD. 22/03/2007 ISSUED TO THE PETITIONER BY ADMINISTRATIVE OFFICER OF THE R.C.C.

EXT.P.6.C: COPY OF THE CERTIFICATE DTD. 22/03/2007 ISSUED TO THE PETITIONER BY THE MEDICAL SUPERINENDENT OF R.C.C.

EXT.P.7: COPY OF THE ORDER DTD. 17/12/2003 OF THE ADMINISTRATIVE OFFICER OF THE R.C.C.

EXT.P.8: COPY OF THE ORDER DTD. 27/07/1981 OF THE GOVERNMENT.

EXT.P.9: COPY OF THE ORDER DTD. 25/04/2006 OF THE ADMINISTRATIVE OFFICER OF THE R.C.C.

EXT.P.10: COPY OF THE REPRESENTATION DTD. 12/12/2006 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE HEALTH MINISTER, VICE CHAIRMAN, GOVERNING BODY OF R.C.C.

EXT.P.11: COPY OF THE NEWS ITEM APPEARED IN THE NEW INDIAN EXPRESS DTD. 09/03/2007.

W.P.(C). NO. 11621/2007:

EXT.P.12: COPY OF THE REPRESENTATION DTD. 09/03/2007 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE CHIEF MINISTER, CHAIRMAN, GOVERNING BODY OF R.C.C.

EXT.P.13: COPY OF THE REPRESENTATION DTD. 09/03/2007 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE HEALTH MINISTER, VICE CHAIRMAN, GOVERNING BODY OF R.C.C.

EXT.P.14: COPY OF THE REPRESENTATION DTD. 14/03/2007 SUBMITED BY THE PETITIONER BEFORE THE HON'BLE HEALTH SECRETARY.

EXT.P.15: COPY OF THE REPRESENATION DTD. 12/03/2007 SUBMITTED BY THE PETITIONER BEFORE THE DIRECTOR OF R.C.C.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.11621 of 2007-H

JUDGMENT

The petitioner is a Nursing Superintendent, working in the Regional Cancer Centre, Thiruvananthapuram, the 2nd respondent herein. Recently, the said respondent has created the post of Chief Nursing Officer. The method of appointment prescribed is direct recruitment. So, Ext.P11 notification has been issued, inviting applications for appointment to the said post. This Writ Petition is filed, challenging Ext.P11.

2. The petitioner submits, the aforementioned post should be made a promotion post for Nursing Superintendents. She joined the 2nd respondent as Nursing Superintendent in 1993 and she is stagnating in that post. Reasonable avenues of promotion are not provided by the 2nd respondent institute, to the petitioner. The same violates her fundamental rights under Articles 14 and 16 of the Constitution of India. She has filed representations before the 1st respondent and others, praying for appropriate modification to the

recruitment rules. So, she prays for granting the following reliefs:

> "(a) issue a writ of mandamus or other appropriate writ, order or direction, directing the respondents to consider the qualified Nursing Superintendents in the Regional Cancer Centre for promotion to the post of Chief Nursing Officer before filling up the post of Chief Nursing Officer by direct recruitment vide Ext.P11,
>
> (b) declare that the fixation of direct recruitment as the sole method of appointment to the post of Chief Nursing Officer is arbitrary, unreasonable, unfair, unconstitutional and violative of Article 14 of the Constitution of India.
>
> (c) issue a writ of mandamus or other appropriate writ, order or direction, directing the first respondent to make provision for promotion to the post of Chief Nursing Officer before filling up the said post by direct recruitment."

3. The learned standing counsel for the 2nd respondent submitted that the said respondent has already taken a decision that the method of appointment to the post of Chief Nursing Officer shall be by direct recruitment. Based on that decision, applications were invited. The petitioner herein is also one of the candidates for the said post, it is submitted.

4. I think, it is for the 2nd respondent to decide what should be the method of appointment to the post created by it. If it thinks that the appointment should be only through direct recruitment, this Court is not justified in interfering with the same. But, having regard to the contentions raised, I think it is only appropriate that the 1st respondent considers the representation of the petitioner, for making the aforementioned post a promotion post for Nursing Superintendents. This, the 1st respondent shall do within one month from the date of production of a copy of this judgment. The selection or appointment, if any, made to the post of Chief Nursing Officer will be subject to the said decision taken by the 1st respondent on Ext.P12 representation filed by the petitioner.

The Writ Petition is disposed of as above.

16th July, 2007. **K. BALAKRISHNAN NAIR,JUDGE.**

Nm/